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Dairymen of Arizona, Shamrock Foods  
Company, Shamrock Farms Company,  
Parker Dairy Farms, Inc. and Dairy  
Institute of California*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

HEIN HETTINGA AND ELLEN  
HETTINGA d/b/a SARAH FARMS;  
and GH DAIRY d/b/a GH  
PROCESSING,

Plaintiffs,

vs.

EDWARD T. SCHAFER,  
SECRETARY, UNITED STATES  
DEPARTMENT OF AGRICULTURE;  
JAMES R. DAUGHERTY,  
ADMINISTRATOR OF THE  
ARIZONA MILK MARKETING  
ORDER; AND UNITED STATES OF  
AMERICA,

Defendants.

No. CIV-08-2124-PHX-FJM

**MOTION OF UNITED  
DAIRYMEN OF ARIZONA,  
SHAMROCK FOODS COMPANY,  
SHAMROCK FARMS COMPANY,  
PARKER DAIRY FARMS, INC.  
AND DAIRY INSTITUTE OF  
CALIFORNIA FOR LEAVE TO  
FILE (1) AN AMICI CURIAE  
MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO  
DISMISS AND (2) DECLARATION  
OF MICHAEL J. FARRELL IN  
SUPPORT OF AMICI CURIAE  
MEMORANDUM**

United Dairymen of Arizona, Shamrock Foods Company, Shamrock Farms  
Company, Parker Dairy Farms, Inc. and Dairy Institute of California respectfully  
move pursuant to Federal Rule of Civil Procedure 7(b) for leave to participate in this  
action as amici curiae in support of Defendant. Accordingly, the proposed amici  
seek leave of the Court to file the attached Amici Curiae Memorandum and  
Declaration of Michael J. Farrell in support of Defendant's motion to dismiss. The  
proposed Memorandum is attached hereto as Exhibit A, and the proposed Declaration  
is attached hereto as Exhibit B.

1 Movants are Arizona dairy farmers, an Arizona fluid milk processor, and a  
2 trade association of California fluid milk processors and dairy product manufacturers.  
3 The Arizona fluid milk processor is regulated by the federal milk marketing program  
4 set forth in the Agricultural Marketing Agreement Act of 1937 (“AMAA”), 7 U.S.C.  
5 § 601 et seq. and accompanying regulations (7 C.F.R. Parts 1000 and 1131) and  
6 competes with Plaintiff Sarah Farms in the Arizona milk market. The Arizona dairy  
7 farmers who seek amici status are all “pool producers” under the same milk  
8 marketing order 131 – while they are not regulated by the Order, they participate in  
9 the statutory and regulatory scheme by and through which these dairy farmers share  
10 in the proceeds of the Arizona fluid milk market on a minimum uniform price basis.  
11 The trade association of California processors and manufacturers represents  
12 “handlers” under the California state milk order system who compete against  
13 Plaintiff GH Dairy and sought adoption of the Milk Regulatory Act because the Act  
14 provided for equitable treatment of handlers both in state and federal order territories  
15 when in competition with each other. Each of proposed amici has a direct interest in  
16 the scope and coverage of the federal milk marketing program in Arizona, as  
17 amended by the Milk Regulatory Equity Act (“MREA”). Each of the amici  
18 supported and indeed actively sought adoption of the MREA. The changes to the  
19 milk marketing system effectuated by the MREA directly impacts each of them.

20 As entities that produce and process fluid milk, movants have a different  
21 perspective and different set of interests than does Congress or the government.  
22 Amici, if permitted, will provide supplemental arguments as indicated in the attached  
23 Memorandum in Support of Defendant’s Motion to Dismiss. District Courts in this  
24 Circuit and in other Circuits recognize that amicus status is appropriate for non-  
25 parties that could be impacted by the potential remedy in the suit. *See e.g., NGV*  
26 *Gaming Ltd. v Upstream Point Molate LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal.  
27 2005)(citing *Cobell v. Norton*, 246 F. Supp.2d 59 (D.D.C. 2003)) (allowing an  
28

1 amicus curiae brief from Native American tribes who were not parties to the suit, but  
 2 who could be impacted by the potential remedy). Movants will be directly affected  
 3 by the outcome of this lawsuit because an adverse decision will directly and  
 4 materially impact their farming and processing operations. *See* 70 Fed. Reg. 74166,  
 5 74168 and 74170 (summary of testimony by United Dairymen of Arizona and  
 6 Shamrock Foods before Secretary of Agriculture in support of USDA Rule that is  
 7 substantially similar to MREA § (N).) Thus, movants request that this Court grant  
 8 their motion to file a brief amici curiae and supporting declaration in this matter.

9 Should the Court grant the instant motion, movants would request permission  
 10 to file a reply brief<sup>1</sup> if necessary and to be allowed limited participation in the Court's  
 11 discretion in oral argument as appropriate.

12 Counsel for Defendants has consented to the filing of an amicus curiae brief  
 13 by United Dairymen of Arizona, Shamrock Foods, Shamrock Farms, Parker Farms  
 14 and Dairy Institute of California, and counsel for Plaintiffs has indicated that  
 15 Plaintiffs will not oppose this request for amicus status.

16 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of May, 2009.

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 18 JENNINGS, STROUSS & SALMON, P.L.C.

19  
 20 By /s/ Michael J. Farrell

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 26 *United Dairymen of Arizona, Shamrock*  
 27 *Foods Company, Shamrock Farms*  
 28 *Company, Parker Dairy Farms, Inc.*  
*and Dairy Institute of California*

27 <sup>1</sup> Movants propose that they would file a reply brief if so permitted on the same date  
 28 as the Defendant.

## CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2009, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Peter J. Phipps: [peter.phipps@usdoj.gov](mailto:peter.phipps@usdoj.gov)
- Alfred W. Ricciard: [awr@ashrlaw.com](mailto:awr@ashrlaw.com), [agm@ashrlaw.com](mailto:agm@ashrlaw.com)

I further certify that on May 27, 2009, I put in the U.S. Mail a paper courtesy copy of the foregoing document and the Notice of Electronic Filing to the assigned Judge.

/s/ K. C. Rusboldt  
K. C. Rusboldt